

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Kedar Narain Sharma
Vs.
State

S.B. CRIMINAL MISC.PETITION NO.9/2005
under Section 482 Cr.P.C.

Date of Order :- **November 6, 2006.**

PRESENT
HON'BLE MR.JUSTICE HARBANS LAL

Mr. Ashvin Garg for the petitioner.
Mr. Arun Sharma P.P. for the State.

BY THE COURT :-

The instant petition under Section 482 Cr.P.C. seeks quashing of the criminal proceedings pending against the petitioner in the court of learned Additional Chief Judicial Magistrate (Communal Riots Cases), Jaipur City, Jaipur in Cr.Case No.341/2003 for offences under Sections 408, 420, 467, 468 and 120-B IPC on the ground of inordinate delay in the completion of the trial.

His learned counsel contends that charge-sheet was filed against the petitioner and co-accused Ravikant Srivastava as back as on 15/9/1993 in respect of an incident which took place on 15/1/1993. Co-accused Ravikant Srivastava has confessed his guilt in his statement in writing. There is no evidence against the petitioner and the case is pending for framing of the charges against the

accused since 21/4/1994. Co-accused Ravikant Srivastava has jumped bail on 21/5/1994 and since then he has not been arrested. He has been declared as an absconder. The petitioner is attending court regularly and the documents which he has sought vide his application dated 30/10/1993 have yet not been received. He has, therefore, submitted that the criminal proceedings against the petitioner tantamount to abuse of the process of the court. The same should be quashed as against the petitioner.

He has placed on record certified copies of the proceedings of the trial court and has also referred to the case of **C. Sivakumar and others Vs. State of Andhra Pradesh : 1991 Cr.L.J. 2337.**

Learned Public Prosecutor has vehemently opposed the prayer. He has submitted that the delay in the conduct of the trial of the case is on account of the petitioner himself who has filed application dated 30/10/1993 for summoning documents which could not have been summoned and looked into at this stage.

I have carefully considered the rival submissions made at the bar and have perused the relevant documents including the order-sheets of the case, the authority referred to above and the report which has been sent for from the concerned court.

A bare perusal of the report dated 19/7/2006 which has been received from the trial court, it is apparent that the delay in trial of the case is the result of filing of the application dated 30/10/1993 by the petitioner for summoning documents. It is well-settled that the documents of the defence cannot

be looked into at the stage of framing of the charges against the accused. This apart, the concerned court after hearing his learned counsel had passed the following order on the application of the petitioner on 17/12/1993:-

' प्रकरण के अभियुक्त केदार शर्मा द्वारा पेश किये गये प्रार्थनापत्र पर उभयपक्षों को सुना गया। वकील प्रार्थी अभियुक्त का कथन है कि बहस आरोप हेतु पत्रावली दिनांक 21.4.94 को नियत है तथा बहस आरोप सुनाये जाने के पूर्व प्रार्थनापत्र में वर्णित दस्तावेज 1 ल. 12 मैसर्स सूर्या रोशनी लि. लाइटिंग डिवीजन जयपुर आफिस से तलब किये जाये। इस सम्बन्ध में विभिन्न न्याय निर्णयों की ओर भी न्यायालय का ध्यान आकर्षित किया। स्वीकृत रूप से पत्रावली बहस आरोप हेतु दिनांक 1.4.94 के लिये नियत है। वकील प्रार्थी का यह कथन कि वांछित दस्तावेज प्रकरण से सुसंगत है। बहस आरोप के पूर्व प्रकरण के गुणावगुणों पर कोई विवेचन किया जाना तथा वांछित दस्तावेजात की सुसंगतता बाबत कोई आदेश पारित किया जाना न्यायोचित नहीं होगा। संबंधित दस्तावेजात की प्रतियां भी प्रार्थनापत्र के साथ पेश नहीं की गयी है। ऐसी स्थिति में इस स्टेज पर उक्त प्रार्थनापत्र का निस्तारण बाबत कोई आदेश दिया जाना उचित नहीं समझा जाकर बहस आरोप सुनी जाने के साथ ही मौजूदा प्रार्थनापत्र पर पुनः सुनवाई का अवसर दिया जाकर समुचित आदेश पारित किया जाना उचित होगा व पत्रावली पूर्वानुसार वास्ते बहस आरोप दिनांक 21.4.94 को पेश हो। '

But, strangely enough, inspite of the aforesaid order, directions to summon documents as per application of the petitioner dated 30/10/1993 were given on 8/11/2000 by his successor. This clearly tantamounts to review of the earlier order

which is neither proper nor legally permissible. A criminal court cannot review its order. Learned counsel for the petitioner neither objected to this nor pointed out to the court that order on the application had already been passed by the court on 17/12/1993. It is further revealed from the report that even process to summon record had not been issued except at two occasions. The learned counsel or the learned Public Prosecutor also did not oppose the adjournment of the case in a routine manner. The then Presiding Officers have also not cared to look into the file to see the compliance of the orders of the court. The concerned, the then Clerks responsible for issuing process had not issued the process in compliance of the orders of the court for such a long period. Still they were not even issued any notices to show cause as to why departmental action should not be initiated against them for dereliction in the discharge of their duties and disobedience of the orders of the court. Indeed, this is a serious lapse on their part. The likelihood of such cases being in sufficiently large number pending in the above court and in other courts of the State cannot be ruled out. The Chief Judicial Magistrates and the District and Sessions Judges ought to look into such cases and monitor the delay being caused in the cases. They should take appropriate timely action against the employees responsible for the same.

Be that as it may, from a perusal of the report dated 19/7/2006, it is apparent that the trial in this case could not make much headway on account

of frivolous application filed by the petitioner himself. The petitioner himself was not vigilant and was rather himself responsible for the delay to a great extent. The presiding officer and the concerned staff of the courts in which the case remained pending during these years also contributed to the delay by their apathetic and casual attitude and approach in handling of this old case in a most insensitive and routine manner. They were, therefore, responsible for gross dereliction in the discharge of their duties which calls for departmental action against them. I do not find it a case fit for quashing of criminal proceedings pending against the petitioner. The authority referred to by the learned counsel for the petitioner being clearly distinguishable on facts does not help the petitioner.

Consequently, this petition is dismissed. It is however, directed that the trial court shall now expedite the trial by fixing it from day to day as far as practicable. Simultaneously, suitable departmental action shall also be initiated against the concerned officials who were responsible for not issuing the process in compliance to the order of the court and thus committing disobedience of the order of the court. The presiding officer of the court shall report the action taken against the concerned officials and shall also inform this Court as to who was the presiding officer who passed the order dated 8/11/2000 reviewing earlier order dated 17/12/1993 so that the matter may be brought to the notice of the

Hon'ble Chief Justice for initiating suitable departmental action against him. The names of the presiding officers with the period of their posting be also intimated so that recommendations may be made to the Hon'ble Chief Justice for making the adverse entry in their ACARs in this behalf. Timely progress of the trial of the case shall be intimated to this Court.

(HARBANS LAL), J.

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AT JAIPUR BENCH, JAIPUR.

O R D E R

Kedar Narain Sharma
Vs.
State

S.B. CR.MISC.STAY APPLICATION NO.9/2005
IN
S.B. CRIMINAL MISC.PETITION NO.9/2005
under Section 482 Cr.P.C.

Date of Order :- **November 6, 2006.**

PRESENT

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Ashvin Garg for the petitioner.
Mr. Arun Sharma P.P. for the State.

BY THE COURT :-

The stay application is disposed of in view
of the order passed in the misc.petition today.

(HARBANS LAL), J.

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